



December 20, 2018

*via ECFS and e-mail*

Marlene H. Dortch

Secretary, Office of the Secretary

Federal Communications Commission

445 12th Street, SW, Room TW-A325

Washington, DC 20554

**Re: Telecommunications Relay Services and Speech-to-Speech Services for  
Individuals with Hearing and Speech Disabilities • CG Docket No. 03-123  
Misuse of Internet Protocol (IP) Captioned Telephone Service  
CG Docket No. 13-24**

Dear Ms. Dortch,

On December 19, 2018, Lise Hamlin of the Hearing Loss Association of America (HLAA), Claude Stout of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Linda Kozma-Spytek of the Gallaudet University Technology Access Program (TAP), and Colleen McCroskey, Blake Reid, and Corian Zacher of the Samuelson-Glushko Technology Law and Policy Clinic (TLPC), counsel to TDI, spoke with:

- Michael Carowitz, Special Counsel to Chairman Ajit Pai;
- Arielle Roth, Wireline Legal Advisor to Commissioner Michael O’Rielly;
- Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Jessica Rosenworcel;
- Jamie Susskind, Chief of Staff to Commissioner Brendan Carr;
- Karen Strauss, Deputy Bureau Chief, Consumer Governmental Affairs Bureau;
- Eliot Greenwald, Deputy Chief, Disability Rights Office
- Bob Aldrich, Legal Advisor, Consumer Governmental Affairs Bureau;
- Michael Scott, Attorney Advisory, Disability Rights Office, Consumer and Governmental Affairs Bureau (CGB);

We presented arguments from the Consumer Groups’ comments and reply comments in the above-referenced dockets on the Commission’s June 8 Further Notice of Proposed Rulemaking, including that states lack the resources to administer the IP CTS program and

that third-party or state-run certification requirements risk deterring legitimate use of the program by millions of Americans with hearing loss.<sup>1</sup>

More generally, we emphasized that many of the proposals in the FNPRM are premised on the questionable notion that the IP CTS program is beset with waste, fraud, and abuse. While we strongly share the Commission's interest in ensuring the sustainability of the IP CTS program and ensuring that it is not abused, the record contains little more than conjecture and speculation that the high levels of use of the program are a result of waste, fraud, and abuse rather than significant, legitimate demand from the large community of Americans who are deaf or hard of hearing to exercise their civil rights to functionally equivalent access to communications under Title IV of the Americans with Disabilities Act.<sup>2</sup> Specifically, the primary basis in the FNPRM for the Commission's assertion of waste, fraud, and abuse appears to be a pair of ex parte filings from the Telecommunications Equipment Distribution Program Association (TEDPA).<sup>3</sup> But these filings each contain little more than brief and conclusory statements about waste, fraud, and abuse:

- TEDPA's 2015 ex parte states simply that "[i]n many situations, individuals initially seeking captioned telephones from state EDPs ultimately decide after assessment

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<sup>1</sup> Misuse of Internet Protocol (IP) Captioned Telephone Service; Further Notice of Proposed Rulemaking, 33 FCC Rcd. 5800 (June 8, 2018) ("2018 FNPRM"), <https://www.fcc.gov/fcc-approves-action-reform-internet-protocol-captioned-telephone-service-ip-cts>; Comments of Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), (Sept. 17, 2018) ("Consumer Groups Comments"), <https://www.fcc.gov/ecfs/filing/1091883305258>; Reply Comments of HLAA, TDI, et al. (Oct. 16, 2018), <https://www.fcc.gov/ecfs/filing/101630636302>.

<sup>2</sup> See 47 U.S.C. § 225.

<sup>3</sup> FNPRM, 33 FCC Rcd. at 5805 & n.32 ("only a portion of individuals who use—or could benefit from using—hearing aids are likely to require IP CTS to achieve effective communication") (citing TEDPA Ex Parte at 1-2 (March 24, 2015) ("TEDPA 2015 Ex Parte"), <https://www.fcc.gov/ecfs/filing/60001027355>), 5825 & n. 147 ("we cannot rule out the possibility that a sizeable portion of the individuals using this service may not need this service to achieve effective communication") (citing TEDPA 2015 Ex Parte at 1), 5854 & n.326 ("Information in the record suggests that only a portion of the millions of Americans who have some level of hearing loss require IP CTS to achieve functionally equivalent telephone communication.") (citing TEDPA 2015 Ex Parte at 1-2; TEDPA Ex Parte (Oct. 4, 2017) ("TEDPA 2017 Ex Parte"), <https://www.fcc.gov/ecfs/filing/1004025145205>).

that a good quality amplified telephone (with or without tone control) more appropriately meets their needs”;<sup>4</sup>

- TEDPA’s 2017 Ex Parte states simply that “TEDPA believes that many individuals that currently use the IP-CTS service may benefit from alternative technologies such as an amplified telephone” and that “an overwhelming number of state [equipment distribution programs] EDPs agreed that most people . . . requesting CTS phones end up getting alternative technologies such as amplified telephones.”<sup>5</sup>

These statements are worrisome and worthy of further investigation on the record in this proceeding. But the record developed in response to the FNPRM provides little to substantiate TEDPA’s concerns. More specifically:

- Many commenters, including audiology associations and relay providers, outright disagree with that waste, fraud, and abuse exists.<sup>6</sup>
- Some commenters commend the Commission for addressing waste, fraud, and abuse, but cite only to the TEDPA ex partes or merely speculate about waste, fraud, and abuse—for example, the National Association of Regulatory Utility Commissioners (NARUC) assertion that there may be “perverse incentives” in current IP CTS marketing practices.<sup>7</sup>

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<sup>4</sup> TEDPA 2015 Ex Parte at 1.

<sup>5</sup> TEDPA 2017 Ex Parte.

<sup>6</sup> Comments of American Speech-Language-Hearing Association at 2 (Sept. 14, 2018); Comments of American Academy of Audiology at 3-4 (Sept. 17, 2018) (stating that audiologists do not receive incentives from providers and that there are ethical rules that prevent such behavior); Comments of Hamilton Relay, at 20-21 (Sept. 17, 2018) (asserting that the Commission has noted only isolated instances of questionable marketing practices, rather than systemic abuse by providers or users); Comments of Sprint Corporation at 6 (Sept. 17, 2018) (asserting that there is no waste within IP CTS and that successfully adding new people to the IP CTS system does not support an inference waste); Comments of CaptionCall at 15 (Sept. 17, 2018) (stating that “the increased demand for IP CTS has been organic and beneficial, and is not attributable to waste, fraud, or abuse”).

<sup>7</sup> Comments of National Association of Regulatory Utility Commissioners (Sept. 17, 2018), <https://www.fcc.gov/ecfs/filing/10917145892161> (citing the Commission’s concerns about perverse incentives); Comments of Pennsylvania Public Utility Commission (Sept. 17, 2018) (citing the Commission’s assumptions of waste, fraud, and abuse from the increase in IP CTS minutes); Comments of Public Service Commission of Utah (Sept. 17, 2018) (citing the Commission’s assumptions of waste, fraud, and abuse); Comments of Florida Deaf Service Center at 1 (Sept. 17, 2018); Comments of ClearCaptions (Sept. 17, 2018) (citing large providers’ relationships with hearing health professionals); Comments of Missouri Assistive

- Many state commissions express concern about their lack of resources to monitor waste, fraud, and abuse if the Commission defers administration to them, but do not cite any independent evidence that waste, fraud, and abuse are prevalent.<sup>8</sup>

In short, the record in this proceeding is essentially an echo chamber of whispers and speculation about waste, fraud, and abuse backed by little concrete information that would justify or inform the Commission's numerous initiatives, many of which threaten to deprive consumers of their civil rights. The lack of rigorous data about the existence, nature, or extent of waste, fraud, and abuse means that the Commission cannot be sure that imposing burdensome and expensive screening requirements on consumers will accomplish anything more than disenfranchising legitimate users of the program.

Moreover, the lack of data places the initiatives proposed in the FNPRM in the same obvious legal jeopardy that has derailed the Commission's previous efforts in this proceeding. When the Commission last sought to impose significant limitations on the IP CTS program, it was admonished by the D.C. Circuit in *Sorenson v. FCC* for failing to offer evidence "that there is fraud to defer" or demonstrate that its initiatives would "defer fraud even if it existed."<sup>9</sup> The court specifically chastised the Commission for "heavily rel[ying]" on an "ex parte letter offer[ing] no evidence showing the necessity or efficacy" of the

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Technology at 2, 12 (Sept. 17, 2018) (claiming that there are people who use IP CTS who would be better served by other technology and provider marketing to hearing health professionals); Comments of Telecom Equipment Distribution Program Association at 2 (Sept. 14, 2018) (relying on the Commission's assumption of waste, fraud, and abuse); Comments of National Association for State Relay Administration at 2 (Sept. 17, 2018) (relying on the Commission's assumption of waste, fraud, and abuse); Comments of ITTA (Sept. 17, 2018) (asserting that "the operation of relay services . . . regrettably have also been commandeered for ignoble purposes").

<sup>8</sup> Comments of Arizona Commission for Deaf and Hard of Hearing Persons at 2 (Sept. 17, 2018) (asserting that a uniform federal approach is needed to reduce waste, fraud, and abuse); Comments of Nebraska Public Service Commission at 5 (Sept. 17, 2018) (stating that the Commission's concern about waste, fraud, and abuse cannot be resolved by states because they cannot monitor IP CTS use on a national level); Comments of Kansas Corporations Commission at 2 (Sept. 17, 2018) (stating that states cannot manage any waste, fraud, or abuse that may exist); Comments of Colorado Public Utility Commission at 2-3 (Sept. 17, 2018) (relying on the Commission's assumption of waste, fraud, and abuse).

<sup>9</sup> 755 F.3d 702, 707 (D.C. Cir. 2014).

Commission's proposed initiatives and for relying on "one unsubstantiated conclusion heaped on top of another."<sup>10</sup> The court demanded that the Commission explain:

- "Where is the evidence that IP CTS technology is being fraudulently used?"
- "[W]here is the proof of the causal relationship between the [Commission's limiting intervention] and the deterrence of fraudulent IP CTS use?"
- "[H]ow did the Commission arrive at the [limiting intervention]?"<sup>11</sup>

The Commission has not meaningfully endeavored to answer any of these questions for its proposals in the FNPRM, and the record developed in response provides no further clarity.

We urged the Commission to change course and consider common-sense approaches to improve the rigor of consumer-driven self-certification. In particular, we discussed the possibility of a standardized self-certification form that might provide a useful source of data about intake and usage of the program. We also noted that if the Commission relies on third-party hearing health professionals to certify users, it will have to develop a uniform system for doing so and use the TRS Fund to compensate certifiers—expensive and difficult challenges that demand a fuller understanding about the purported waste, fraud, and abuse they aim to remedy if they have any chance of succeeding

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Please don't hesitate to contact me if you have any questions.

Respectfully submitted,

/s/

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<sup>10</sup> *Id.* at 708.

<sup>11</sup> *See id.*